



DEPARTMENT OF NATURAL RESOURCES
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January 24, 2012

Elbert County Commissioners
215 Comanche Street
Kiowa, CO 80117

Dear Commissioners:

The Colorado Oil & Gas Conservation Commission (COGCC) has set forth below our initial comments on your proposed oil and gas regulations dated December 27, 2011.

Background

For sixty years, the COGCC has been the primary state agency charged with regulating oil and gas development in the State of Colorado. Under the Colorado Oil and Gas Conservation Act, the COGCC is charged with fostering the responsible development of Colorado's oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including protection of the environment and wildlife resources. Colo. Rev. Stat. § 34-60-102(1)(a)(I). In implementing this authority, the COGCC has worked productively with local governments across Colorado.

To this end, our regulations provide local governments with special rights to notice of, information on, and comment regarding various matters and to initiate or participate in planning processes, hearings, and public forums. For example, we seek to work with local governments to ensure that our permitting decisions consider and address local concerns through our local government designee program. COGCC Rules 214 (Local Governmental Designees), 303 (Drilling Permit Applications and Location Assessments), 305 (Notice, Comment, and Approval of Applications), & 306 (Consultation on Applications). Through that process, local governments can submit comments regarding, and recommend conditions on, permit applications, consult with COGCC staff and applicants, and seek input from the Colorado Department of Public Health and Environment in appropriate circumstances. If a local government disagrees with our permitting decision, then it is entitled to a hearing before our commission. *Id.* at Rule 503 (Hearing Applications). Other regulations that vest local governments with special rights include Rules 205 (Access to Records), 216 (Comprehensive Drillings Plans), 312 (Change of Operator), 333 (Seismic Operations), 508 (Local Public Forums), 509 (Protests and Interventions), 513 (Geographic Area Plans), 607 (Hydrogen Sulfide), 608 (Coalbed Methane), 801 (Aesthetics and Noise), 908 (Centralized E&P Waste Management), 912 (Venting and Flaring), & 1101 (Pipelines).

In implementing our regulations, we also benefit from an experienced and capable technical staff, which includes petroleum, civil, environmental, and geotechnical engineers, geologists, hydrologists, geo-chemists, planners, and other environmental scientists. All of our engineers

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COGCC COMMISSION: Richard Alward – John Benton – Thomas L. Compton – DeAnn Craig – Tommy Holton – W. Perry Pearce – Andrew Spielman – Mike King – Chris Urbina
COGCC STAFF: David Neslin, Director – Margaret Ash, Field Inspection Manager – Debbie Baldwin, Environmental Manager – Stuart Ellsworth, Engineering Manager

and environmental professionals and many of our field inspectors and permitting staff have undergraduate degrees in engineering or science. Twelve of our engineers, environmental professionals, and field inspectors hold graduate science degrees, and two have PhDs. Collectively, they each average more than 20 years of professional experience.

Regulations of Concern

The attached table lists certain of your proposed regulations that would or could conflict with our current regulations. For your convenience, we have included both references to the relevant COGCC regulations and explanations of the conflicts. Given our many other obligations, and our desire to provide you with prompt input, we have had only a limited opportunity to review the proposed regulations; therefore, the attached table may not identify all potential conflicts.

Some of the conflicts reflect your proposed imposition of new requirements that differ substantively from the comparable requirements imposed by our regulations, such as those involving well setbacks and spacing, noise standards, water body protection, security fencing, and wildlife, waste, produced water, and storm water management. Other conflicts reflect your proposed imposition of new requirements where no comparable requirement is imposed by our regulations, such as those involving operating plans. All of these potential conflicts are of concern to us because they may materially impede the responsible and balanced development of oil and gas in Elbert County. For example, conflicts between our respective regulatory regimes could create inconsistent obligations for operators, generate confusion over applicable requirements, consume staff time, and impose costs and delays.

These potential conflicts could also interfere with our statutory authority “to regulate [o]il and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resources...to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost effectiveness and technical feasibility,” Colo. Rev. Stat § 34-60-106(2)(d), and our statutory obligation to ensure that our permitting process remains “timely and efficient,” *id.* at § 34-60-106(11)(a)(I)(A).

For these reasons, we believe that certain of the proposed regulations would undermine our joint interest in ensuring that oil and gas development in Elbert County is effectively and efficiently regulated and create the potential for future disputes.

Intergovernmental Coordination

We understand and share many of the apparent objectives behind your proposed regulations. As mandated by the Colorado legislature, we are committed to the exploration and development of oil and gas in an environmentally responsible manner. This commitment is reflected in our extensive regulatory program, our rigorous and transparent permitting process, our frequent imposition of site-specific permit conditions, and our record of support for pitless drilling, landscape level planning, groundwater monitoring, and hydraulic fracturing disclosure.

At the same time, we have significant concerns that certain of your proposed regulations will conflict with COGCC regulations. We therefore request an opportunity to discuss with you how we can collaboratively resolve these conflicts and coordinate our respective regulatory programs in a manner that achieves our common goals. This could, for example, involve exploring ways to facilitate Elbert County's use of the local government designee process to address its concerns with future oil and gas development. It could also involve exploring the possibility of programmatically addressing such concerns through an area specific order under COGCC Rule 503, a local public forum under COGCC Rule 508, or a geographic area plan under COGCC Rule 513. We recently went through a similar collaborative process with Gunnison County, which resulted in the development of a memorandum of agreement.

Respectfully,

A handwritten signature in black ink that reads "Dave Neslin". The signature is fluid and cursive, with "Dave" on top and "Neslin" below it, both starting with a capital letter.

Dave Neslin
Director

Elbert County – Part II, Section 26 of the Elbert County Zoning Regulations		COGCC Rules	
Citation	Language	Citation	Comment
26.1.l	Establishes the Elbert County Oil & Gas Advisory Board (ECOGAB) comprised of industry, public, landowners and county to deal with conflicts. If no resolution can be ID'd, refers conflict to COGCC		COGCC should be noticed on these meetings/conflicts and provided meeting minutes if issues might be forwarded for COGCC resolution. Probable inclusion as a stakeholder?
26.2.B.(2)(e)	Establishes the potential to distribute application to "referral agencies".		Referral agencies are not defined. Are these governmental agencies or??
26.3.E.(4)	Requires project specific Emergency Response Plan to include areas of known H2S gas to be coordinated and approved by OEM prior to field work.	607	COGCC Rules require specific H2S Drilling Operations Plan to be field and coordinated with COGCC in H2S areas.
26.3.H.(1)	Requires a Facility Improvement Plan (FIP). Details include site specific Operations Plan including pre-, during, and post-operating activities. Requires submittal of a "site reclamation plan pursuant to COGCC requirements and a re-vegetation plan as required by these regulations."	1000	COGCC does not require the submittal of reclamation or re-vegetation plans with permit applications. Operators are required to meet the language in Rule 1000, but no written plans are required unless for site specific situations.
26.3.H.(2)(b) & (f)	FIP Graphic sections b and f refer to "lease area".		This is not defined in definitions and could pose a conflict as lease areas are typically very large and encompass more than one well pad or site facility.
26.4.A.(8)	Noise standards given as 55 db(A) from 7:00 AM to 7:00 PM and 50 db(A) from 7:00 AM to 7:00 PM at the property line.	802.c.	These are COGCC residential/agricultural/rural standards. No provision is given for commercial, industrial or other standards.
26.4.C	Requirement for security fencing if existing residence, school or recreational facility is located within 660 feet of the well pad or compressor site.	603.e.(7) 1002.a	Fencing required only in high density areas – no specific setback criteria. Or at the request of the surface owner in COGCC rules.
26.4.D	Requires decorative fencing to be approved by County w/in 1320 ft of residential, church, commercial or school use area, plus landscaping (6' trees) at 30' linear spacing along fence for visual mitigation.		No visual mitigation decorative fencing or landscaping criteria in COGCC rules.
	Requires a "landscape bond". No provisions for surface owner consultation on type of vegetation used.		No landscape-specific bond in COGCC rules.
26.E	Wildlife Management Plan required. Details of this section require wildlife surveys and mapping w/ results of said surveys sent to County, CPW and Colorado Natural Heritage Program. Can provide a multiple site Wildlife Management Plan in lieu of site-by-site analysis.	306.c	COGCC rules require wildlife consultation w/ CPW to occur via COGCC permitting process.
			No provision given for surface owner consultation or input on private lands.

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26.F	Water Supply Plan – Requires minimum compliance w/ COGCC 324 & 325		325 are the UIC rules. Unsure how this applies.
26.F.(1)	Requirement for providing a letter from the SEO stating the water supply source is legally decreed or permitted.		This documentation cannot be provided when an operator is purchasing water from a public or private water supply, which is often the case.
26.F.(3)	Setback of 1000 ft from normal high-water line of any water body.		No equivalent setback in COGCC rules.
26.F.(4)	Requires water testing from all permission-granted, permitted water wells w/in 1-mile of the proposed well site, pre- and post-drilling, post-completion and post production every 5 years for 15 years.	COGA 608	No equivalent COGCC program, unless CBM, then this conflicts with Rule 608 requirements. Conflicts w/ COGA voluntary sampling program.
26.F.(5)&(6)	(5) neglects to have data forwarded to COGCC. (6) requires submittal to COGCC.		Any collected water quality data should be submitted to the COGCC since we maintain a state-wide database and provide the best management resource.
26.F.(7)	Language appears to require all “Test & Survey” data under the COGCC for the life of the well to be co-submitted to the County.		Language is straight from Rule 207. All COGCC data are public and posted online so this seems burdensome to operators. Could include every bradenhead, spill report, sundry etc.
26.F.(10)	Prohibits use of pits in Elbert County.	900	COGCC allows pits under circumstances delineated in Rule 900.
26.G.(1)	Requires the submittal of a Stormwater Management Plan that must be approved by County Engineer.	1002.f.(2) & (3)	NOTE: This section is difficult to read and it is often unclear what the County is actually requesting or requiring. For example, #8 (methane testing) should be a subsection of #4 (water well sampling) but it is a stand-alone subsection. It reads like a patch-work of various language taken from other documents. Technical editing is warranted.
			Stormwater management during construction is via a CDPHE permit; authority transferred to COGCC under Rule 1002.f.(3) during operations.

Elbert County – Part II, Section 26 of the Elbert County Zoning Regulations		COGCC Rules	
Citation	Language	Citation	Comment
26.G.(3)	Requires topsoil stripping and very prescriptive management and stormwater controls, including ditches and a catchment pond – both which must be lined w/ 40 mil liner. Requires use of topsoil in construction of 12" high berm around site.	1002.b	Conflicts with COGCC-mandated topsoil handling rules. Required use of topsoil for berm construction is detrimental to topsoil health and not a recognized BMP.
26.G.(4)	Requires topsoil replacement and seeding w/ a mix recommend by the soil conservation district following completion of “on-site development operations, excluding the production phase...”.	1003-1004	Unclear if this is interim or final reclamation. Could potentially conflict w/ 1003 and 1004 as COGCC has prescriptive reclamation rules, depending upon intent. No consideration given to surface owner for seeding/revegetation on private lands.
26.I.(5)	Requires a written Waste Management Plan that details beneficial use and recycling of E&P waste. Appears to be requiring “methodology for recycling the majority of the E&P production waste for re-use in the fracking process...”	907	COGCC has delegated authority for E&P wastes, including any requirement for Waste Management Plans for recycle/reuse under 907.(a)(3). Rule 907 is very prescriptive in how all E&P wastes must be handled. Potential for conflict is high. Redundancy to COGCC rules is a given.
26.J.(2)	Control & Disposal of Produced Water – appears to require on-site treatment of produced and back-flow waters. Cites transport to an “EPA-approved facility”. Requires analytical testing of produced water for an ill-defined list of “contaminants” and subsequent consultation with COGCC and CDPHE to determine disposal method. Requires submittal of analytical data to County “which will be public information”.	907.c	COGCC rules give very specific disposal practices for produced water. Analytical testing is per UIC regulations for disposal wells or as prescribed by the waste-accepting authority. COGCC does not prescribe this. The proposed County language does not provide a specific list of parameters to sample for as it includes the language “including but not limited to” and refers to “salts, metals, hydrocarbons, chemical residues, total dissolved solids and radioactive materials”. There are no analytical methods available for most of those parameters as described.
26.J.(3)	Secondary Containment – Requires secondary containment and refers to “crude oil, condensate, or produced water”. This section is titled “Control and Disposal of Produced Water” – oil and condensate tanks do not seem to fit into this section. Language requires containment to contain the contents of “the largest single tank plus 15% freeboard plus 10% additional firefighting volume”.	604.(a)(4) 603.(e)(12)	Wrong place to reference oil and condensate tanks. Does not match heading.
			Conflicts with COGCC requirements for largest tank plus sufficient freeboard for precipitation or 150% largest single tank volume in high-density areas.

Elbert County – Part II, Section 26 of the Elbert County Zoning Regulations		COGCC Rules	
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26.M	Parcel Size: Maximum Number of Wells – Limits spacing to not exceed 5 pads w/in 640-acres. Language is confusing on minimum parcel size – states the minimum for all O&G Facilities is 10-acres then states “proposed well sites shall be located on parcels of 60 acres or greater”.	Oil & Gas Conservation Act 34-60-116	COGCC defines drilling windows. Potential conflict in development of a new field. No definition of “Oil & Gas Facility” or “Well site” so unclear what the minimum parcel size is.
			NOTE: Definition of Spacing in 26.5 states “Spacing requirements are established by the COGCC”.
26.N	Setbacks – Requires setback of 600 ft between wellhead and the closest existing residential structure. Requires 200 ft setback between the wellhead and closest property line. Waiver may be granted for Minor facilities if adjacent surface owner approval obtained.	603	COGCC only requires 150 ft setback from a property line. 350-500 ft of setback in High Density Areas.
26.O.(3)	Requires use of vapor recovery systems on permanent Oil & Gas Facilities instead of “flare-off”	317.I 805.b(3) 912	COGCC allows for flaring under prescribed conditions and following Sundry submittal during normal operations.
25.R.(2)	Requires immediate County OEM notification of a spill event as well as “Operator’s home office and EPA (as required for spills more than 42 gallons).” Dictates cleanup method (soil removal) and soil disposal methods.	906	Direct conflict with COGCC rules. E&P waste spill authority is delegated to COGCC and follow very prescriptive requirements under 906.b-e. MOU with CDPHE in 2000 delegates response to spills to surface water to COGCC w/ notification to CDPHE. EPA is not the notification agency. Spills are memorialized on COGCC Form 19 and all Site Investigations & Remediation are conducted in consultation w/ COGCC via Form 27. COGCC staff assess and approve remediation activities.
26.5 - Definitions	Has both “Containment Pit” and “Open Pit” with same definition. “Open Pit” definition prohibits the use of pits. Includes partially buried tanks in both pit definitions – thereby by the “Open Pit” definition partially buried tanks are prohibited.		COGCC specifically excludes partially buried tanks from the pit definition. COGCC allows pits under Rule 900 conditions.
	“Facility Improvement Agreement ” is defined as “required to identify the costs of improvement necessary to implement the Facility Improvement Plan”.		The only reference to this Agreement is in 26.3.B, Submittal Requirements Table. No discussion anywhere else?

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	"Fracking" →		The correct technical term is "hydraulic fracturing" and it involves the injection of fluid and proppants into fractures to 1) open them and 2) hold them open thereby enhancing reservoir flow.
			NOTE: 26.2.I provides an Operational Conflict Waiver if the requirements of these regulations conflict with the rules of the Oil and Gas Conservation Act or implementing regulations.